



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2004

Ms. Ellen B. Huchital  
McGinnis, Lochridge & Kilgore, L.L.P.  
1221 McKinney Street, Suite 3200  
Houston, Texas 77010

OR2004-4909

Dear Ms. Huchital:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203478.

The Eanes Independent School District (the "district"), which you represent, received a request for information relating to the departure of a school principal. You state that the district will release some of the responsive information. You assert that some of the responsive records are not subject to the Public Information Act (the "Act"). You also assert that some of the records are excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We note that, in accordance with the Family Educational Rights and Privacy Act, the district has redacted some of the submitted records to protect personally identifiable student information. *See* Open Records Decision No. 634 (1995) (permitting educational agencies and institutions to withhold personally identifiable nondirectory information in "education records" as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, without the necessity of requesting an attorney general decision). We have considered your arguments and have reviewed the submitted information.

We begin by considering your assertion that the notes created by the district's superintendent are not public information within the scope of the Act. Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the

information or has a right of access to it.” Gov’t Code § 552.002. You state that the notes at issue were created by the superintendent, are maintained in her sole possession, and were made solely for her own use as a memory aid. In support of your position, you cite to Open Records Decision No. 77 (1975) where we concluded that personal notes made by individual faculty members for their own use as memory aids were not subject to the Act. We note that in the thirty years following the issuance of Open Records Decision No. 77, this office has issued numerous rulings concluding that information collected, assembled, or maintained in connection with the transaction of official business, including “personal” notes, is subject to the Act. *See e.g.*, Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to a teacher “were made in their capacities as supervisors of the employee” and constitute public information), 120 (1976) (faculty members’ written evaluations of doctoral student’s qualifying exam subject to predecessor of Act).

The records at issue, including the notes, relate to an investigation by the superintendent into the conduct of a district employee. Thus, the information was created as part of the district’s official transaction of business. Furthermore, the Act’s definition of “public information” is not dependent on considerations such as whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body’s access to the information. *See* Open Records Decision No. 635 at 3-4 (1995). Accordingly, we find that the notes are subject to the Act and may only be withheld from disclosure if an exception under the Act applies.

Next you assert that the information in Exhibit B is protected from disclosure under section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). Furthermore, you do not state, nor do the records reflect, that they are maintained by the district's law enforcement unit or were forwarded to another agency conducting an investigation under this chapter. Therefore, the district may not withhold any of the records in Exhibit B under section 552.101.

You also contend that the highlighted information in Exhibit B is excepted from disclosure under section 552.135(b) of the Government Code. Section 552.135 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks

to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You state that the district obtained statements regarding suspected child abuse. Upon review, we find that almost all of the individuals at issue are persons that the district interviewed during the course of its investigation. We have marked the identifying information of the employee who actually reported the violation of law to the district. Accordingly, the district may only withhold the marked information from disclosure under section 552.135 of the Government Code.

Finally, we note that Exhibit B contains the home telephone number of a district employee. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Thus, if prior to the district's receipt of this request, the employee elected to withhold her home telephone number from disclosure, you must withhold this information from disclosure under section 552.117(a)(1). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

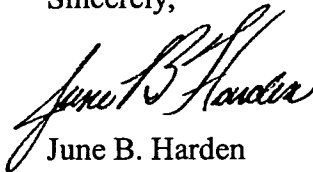
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 203478

Enc: Submitted documents

c: Ms. Melissa Ludwig  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767  
(w/o enclosures)